



An  
Bord  
Pleanála

## Inspector's Report ABP-312351-22

### **Nature of Application**

Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended

### **Location**

Saint Rita's, 19 Lower Hartstonge Street, Limerick City

### **Local Authority**

Limerick City and County Council

### **Notice Party**

John Burke & Andrea Ryan

### **Date of Site Inspection**

10<sup>th</sup> May 2023

### **Inspector**

Mary Kennelly

## 1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 19 Lower Hartstonge Street, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. The site is located on Lower Hartstonge Street which is situated in the Georgian area of Newtown Pery in Limerick City Centre. It comprises a mid-terrace two-bay four-storey over basement property on the northern side of Lower Hartstonge Street. It is situated between Henry Street and O'Connell Street, at the western end of the street. It is close to the O'Connell Monument on The Crescent and to the People's Park. The application site is situated within the Newtown Pery Architectural Conservation Area. Saint Rita's, No. 19 Lower Hartstonge Street is a Protected Structure (RPS 132) and listed on the National Inventory of Architectural Heritage (NIAH 21517089).
- 2.2. The property is described as a terraced, 2-bay, four-storey over basement redbrick house dating from 1840. The redbrick walls are laid in Flemish bond with cement re-pointing and limestone coping to parapet wall. The window openings are square headed with red brick flat arches, painted rendered reveals and painted limestone cills. The ground floor window has been replaced with upvc but the windows on the first, second and third floors have original timber sash windows. There is a wide elliptical-arched door opening with painted rendered reveals and a decorative doorcase with architrave and a spoke wheel fanlight. The front door opens onto a limestone platform which has been covered with concrete and which is flanked by original wrought-iron railings with spearhead finials on a limestone plinth wall, returning to enclose the basement area. The basement elevation is painted render and there is a timber casement window with original glass. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. On the date of my site inspection, the property was secure with the front door and doorcase intact and the front windows closed. The ground floor window has been replaced in the past with upvc. The upper floor windows are original sash windows,

but several have broken panes. The brickwork is generally intact but in need of cleaning and/or repointing, apart from the top floor where the area around the parapet has vegetation growing out of the wall. The front door has been replaced recently and the joinery (doorcase, architrave, fanlight) and rendering around the door are in need of repair and/or replacement and repainting. The windows are in a poor state of repair and the reveals and cills have cracked render and peeling paintwork. The rainwater goods have been replaced with white plastic piping and there is wiring and piping protruding from the property. The railings are in a poor state of repair, with some rails missing and are unpainted and rusting. The plinth wall is also in a poor state of repair with moss and damaged render and needs repainting.

- 2.4. There is vegetation growing on the property, with vegetation evident at parapet and roof level, including the chimney, the gutter, the top floor brickwork and windows, and weeds are growing on the platform in front of the door. The lightwell was covered with moss and weeds with litter and rubbish present in the basement area. There was a sign advertising that the property was for sale.
- 2.5. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front elevation and basement area from the street.

### **3.0 Application for Consent for Acquisition**

- 3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on the 29<sup>th</sup> of October 2020, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on the 17<sup>th</sup> of February 2021, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites).

### **4.0 Application and Objection**

#### **4.1. Notice of Intention to Acquire**

- 4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (John Burke and Andrea Ryan) in

a letter dated 20<sup>th</sup> October 2021 and was published in the Limerick Post newspaper on the 23<sup>rd</sup> October 2021. The site was described as follows in the notices:

- A derelict site comprising a two-bay, four-storey over basement, terraced, red brick premises and surrounding land situate at Saint Rita's, 19 Lower Hartstonge Street, Limerick, containing 0.007 hectares or thereabouts. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-041-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

#### **4.2. Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by John Burke and Andrea Ryan in an email dated 24<sup>th</sup> November 2021. The objection can be summarised as follows:

- Objection is being made by the owner of this property who states that the site is not derelict.
- The property was previously offered to Limerick City and County Council for development as social housing, but this offer was declined.
- The property is currently on the open market for sale through GVM Auctioneers and the actions of the local authority jeopardise this process. Please contact the owner's agent to make a market offer as part of the ongoing sales process.

#### **4.3. Local Authority's Application for Consent**

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 20<sup>th</sup> December 2021 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection.
- The report included photographs and a map of the site area.
- Copy of the notices served on the owners/occupiers of the site, dated 20<sup>th</sup> October 2021.
- Copy of the newspaper notice, dated 23<sup>rd</sup> October 2021.
- Copy of objection made by John Burke and Andrea Ryan, dated 24<sup>th</sup> November 2021.

4.3.2. The **Derelict Site Report** can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.
- Matters that are taken into account include :-
  - outstanding planning permissions,
  - evidence of efforts to address vacancy and dereliction,
  - security, safety to the public and condition of the site,
  - the conservation value of the building and requirement for remedial restoration works, and
  - the feasibility of various actions to make good the site and find viable uses for the site.

- The property first came to the attention of the L.A. in January 2017 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2017, Ref. DS-041-17, when it was first inspected. On the day of the initial inspection, the front entrance door was 'smashed in' and the building was occupied by squatters. The occupants were later removed, and the entrance door replaced in March 2017. The owners were provided with information on the Repair & Lease Scheme, Buy & Renew Scheme, conservation grants and the Living City Initiative.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated October 2017, March 2019, September 2020 and October 2021 are included with the application.
- The property is within the Newtown Pery Architectural Conservation Area, between O'Connell Street and Henry Street, the centre of Georgian Limerick. No. 19 is recorded on the National Inventory of Architectural Heritage as NIAH 21517089 and is on the Council's Record of Protected Structures RPS 132. It was noted that the building has retained its original timber sash windows on the first, second and third floors but that the ground floor and basement windows had been replaced with PVC ones. It was further noted that the original wrought iron rainwater goods had been replaced with white PVC and that the original front door had been replaced in 2019. The original doorcase and fanlight were noted as being in place.
- The site comprises a terraced, two bay, four-storey over basement Georgian property. The appearance was described as follows :-

The land detracts to a material degree from the land in the neighbourhood of the land because of the neglected and unsightly condition of the structure on the land due to the lack of property maintenance.

The window reveals and cills have not been painted in a long time.

The render on the upper floor window reveals has fallen off in places.

The timber windows and entrance door case have not been painted in a long time and several window-panes are missing on the upper floor windows.

The wrought iron railings have not been painted in a long time resulting in significant visible rust spots.

There is a significant amount of vegetation growing in the basement area, third floor window cills and façade at parapet wall level.

- Following the notice and inspections in January 2017, site ownership enquiries were made, and the registered owners were established as John Burke and Andrea Ryan of 15 Myra Manor, Malahide Road, Malahide, Co. Dublin. It was noted that there were no planning applications on the site. A planning application to demolish a rear extension and to construct a four-storey extension had been withdrawn (Ref. 10/770142).
- A Notice was issued on 29<sup>th</sup> October 2020 of the local authority's intention to enter the land onto the Derelict Sites Register. No response was received from the owner and the site was entered onto the register on 16<sup>th</sup> February 2021. A section 8(7) Notice to this effect was served on the owner on the 17<sup>th</sup> February 2021. No response or representation was made to this notice. The site has remained on the register since.
- Taking into consideration the continued dereliction and dangerous condition of the building, the decision was made to compulsorily acquire the site. The owner was notified of this under section 15 of the Derelict Sites Act on the 21<sup>st</sup> of October 2021 and it was publicised in the local newspaper on the 23<sup>rd</sup> of October 2021.
- An objection to the section 15 notice was submitted by the owners, John Burke and Andrea Ryan, on the 24<sup>th</sup> November 2021.
- The Local Authority contends that it is the inaction of owners and the failure of their duties under the Derelict Sites Act 1990 (as amended) that jeopardises the future use of the property in the area due to their continued neglected and derelict state. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

#### 4.4. Objector's Submission

- 4.4.1. The Board has not received any submission from the owners, John Burke and Andrea Ryan.

### 5.0 Planning History

- 5.1. No record of any planning applications or permissions relating to the site. An application Reg. Ref. 10/770142 was submitted to the planning authority on the 9<sup>th</sup> of July 2010 for the demolition of an existing rear extension and the reconstruction of a four-storey extension at the rear. However, this application was withdrawn.

### 6.0 Policy Context

#### 6.1. Development Plan

- 6.1.1. The applicable Development Plan is the Limerick City and County Development Plan 2022 – 2028. This plan became effective on the 29<sup>th</sup> of July 2022, which was after the site was entered on the Derelict Sites Register and after the owner of the property was notified of the local authority's intention to acquire it by CPO.
- 6.1.2. One of the strategic objectives for Limerick (Chapter 1) is to ensure the revitalisation and consolidation of urban areas through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4). The theme of revitalisation and delivery of compact growth is central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3). **Policy CGR P1** sets out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban areas. One of the measures required to create compact, dense and sustainable urban centres is 'Active Land Management' (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban areas into beneficial use (**Policy CGR O4**). Key legislative measures to facilitate this include the powers under the Derelict Sites Act 1990.
- 6.1.3. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and County Council is



proactive in identifying and seeking the improvement of such sites to address incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.

**Objective CGR O6 – Derelict sites** – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.

6.1.4. The Living Limerick City Centre Initiative (3.4.3.2) is a 7-year programme which was awarded funding in 2021 under the Urban regeneration Development Fund. It seeks to make positive, innovative and transformational change to revitalise the centre of Limerick City and is seen as a growth enabler. The LLCC Initiative seeks, inter alia, to renew vacant, underutilised and derelict buildings in the city centre. Chapter 5 ‘Strong Economy’ sets out the Economic Strategy. The success of economic growth is said to be intertwined with maintaining and enhancing its attractiveness. The City Centre is seen as a key driver of economic activity in the region. Policy ECON P1 seeks to support the implementation of Limerick 2030 – An Economic and Spatial Plan to guide the economic, social and physical renaissance of Limerick City Centre and the wider county/Mid-West Region.

6.1.5. The site is zoned **City Centre Area**, the Zoning Objective for which is to protect, consolidate and facilitate development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities.

## 6.2. **Derelict Sites Act 1990 (as amended)**

6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.2.2. Section 3 of the Act defines ‘derelict site’ as:

“Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.”

6.2.3. Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so. Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site. Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

## 7.0 **Assessment**

7.1. Internal access to the property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road adjoining the site.

7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding residential area. This is due to the fact that the render is cracked and peeling in places and the paintwork is in need of repainting.

There are several windows with broken/missing panes, the render and paintwork on the cills and reveals is peeling and/or covered in mould/moss, and there is vegetation growing out of the third-floor window. The brickwork at parapet level also appears to be in a poor state of repair with vegetation growing within the gutters, on the brickwork and out of the chimney. Wrought iron downpipes have been replaced with white PVC pipes and traverse the front facade and wiring and piping is protruding. The wrought iron railings along the front boundary are rusting and are also in need of repair and repainting. The vegetation and weeds around the front door and platform, combined with the poor state of the plinth wall and railings, detract considerably from the appearance of the building. There is some rubbish, debris and litter within the lightwell area, which detracts from the amenity of the area.

- 7.3. The combination of these factors detracts from the amenity of the street and the character of the area, and in particular, have a detrimental impact on the conservation value of the Protected Structure and the Architectural Conservation Area. The property has been in a derelict state and has remained vacant for some time and its condition has deteriorated during this period of vacancy and dereliction. The longer the building is vacant and in a state of dereliction, the greater is the likelihood of significant damage to historic fabric and the need for remedial restoration works, with the potential for greater levels of intervention. Thus, the continued dereliction of the property threatens the conservation value of the Protected Structure and restricts the opportunities to find viable uses.
- 7.4. The property is situated in the middle of a row of similar terraced properties which are generally occupied and in use as commercial and/or residential premises, which appear to be well maintained and in good condition. The lands in the general vicinity form part of the Georgian area of Limerick City, known as Newtown Pery, and contains many historic sites. This area is designated as an Architectural Conservation Area and contains many historic and protected structures, with some of the adjoining sites being listed on the NIAH register. The area has an attractive appearance, and the public realm is well cared for, with high quality public amenities such as the People's Park and the Art Gallery in the vicinity. The site also forms part of the City Centre for which there are Development Plan policies to promote the attractiveness of the city centre. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.

- 7.5. Although much of the brickwork on the front façade appears to be in reasonable condition, with no obvious evidence of significant cracking or additional damage to the external walls, the brickwork at the parapet area appears to be in a poor state of repair, with vegetation growing out of the wall. The window openings are either fitted with non-traditional upvc windows or are in a poor state of repair. I note from the photographs provided with the Local Authority report, however, that the property has deteriorated further since the first inspection in 2017, with additional broken window panes and vegetation on the facade.
- 7.6. Having regard to the above, I would consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition. Having inspected the site, I consider that there is also evidence that the structure is in a derelict condition, and that it could be considered ruinous. Thus, it is considered that the site falls within category (a) of the Derelict Sites Act 1990.
- 7.7. There was evidence of litter, debris, rubbish, including waste deposited within the lightwell area and general litter within the application site. I consider therefore that the site also falls within category (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.
- 7.8. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 29<sup>th</sup> October 2020, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 17<sup>th</sup> February 2021, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(1)(a) notices were served on 20<sup>th</sup> October 2021 and published in the Limerick Post Newspaper on the 23<sup>rd</sup> October 2021 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.9. I note the objection made to the Local Authority by the owners, John Burke and Andrea Ryan, on the 24<sup>th</sup> November 2021 to the proposed acquisition of the site, stating that the property was not derelict, that it is currently on the market for sale,

that the property had previously been offered to LCCC for use as social housing, but that the offer was declined. An invitation was extended to the local authority to make a market offer as part of the ongoing sales process.

- 7.10. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. No further information has been provided to the Board regarding any progress made on advancing the works to enable the property to be removed from the Derelict Sites Register. I therefore consider that the site remains in a derelict condition.
- 7.11. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at Saint Rita's, No. 19 Lower Hartstonge Street, Limerick is granted.

## **8.0 Recommendation**

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 8.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the neglected, unsightly and objectionable condition of the site, the poor state of repair of the external wall at parapet and top floor levels and to the presence of litter, debris and waste materials on the site it is considered that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as

defined in sections 3(a), 3(b) and 3(c) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Mary Kennelly

Senior Planning Inspector

25<sup>th</sup> May 2023